

CHAPTER 17
BARGE FLEETING REGULATIONS
[Prior to 12/31/86, Conservation Commission[290] Ch 54]

571—17.1(461A) Purpose. The purpose of these rules is to regulate the practice of barge fleeting in order to protect public and private rights and interest in public waters of the state of Iowa under the jurisdiction of the commission; to protect public health, safety and welfare; and to protect fish and wildlife habitat.

571—17.2(461A) Policy. The policy of the natural resource commission is to recommend that the executive council of Iowa lease strategically located barge fleeting facilities on the public waters of the state of Iowa under the jurisdiction of the commission in a manner consistent with the state's role as trustee of its waters.

571—17.3(461A) Applicability. This chapter is applicable to all public waters under the jurisdiction of the commission except that portion of the Mississippi River conveyed to certain cities by chapter 249, Acts of the Fifty-first General Assembly; chapter 299, Acts of the Fifty-ninth General Assembly; or Special Charters enacted by the legislature in 1856 and 1857. This chapter regulates the use of those waters for barge fleeting, including the installation of structures, physical site modification such as dredging, and operation of fleeting equipment and maneuvering of barges within the fleet.

571—17.4(461A) Definitions. For the purposes of this chapter, the following definitions shall apply:

“*Commission*” means the natural resource commission.

“*Deadman*” means an anchor buried in the upland adjacent to a fleeting area.

“*Department*” means the department of natural resources.

“*Director*” means the director of the department of natural resources or the director's designee.

“*Dolphins*” means a closely grouped cluster of piles driven into the bed of a waterway and tied together so the group acts as a unit to withstand lateral forces from vessels or other floating objects.

“*Fleeting area*” means an area within defined boundaries used to provide barge mooring service and to accommodate ancillary harbor towing under care of a fleet operator. The term does not include momentary anchoring or tying off of tows in transit and under care of the line haul towboat.

“*Lease*” means a lease as authorized under Iowa Code section 461A.25 for the purpose of authorizing a fleeting area.

“*Mooring barge*” means a barge held in place by anchors or spuds and used to moor other barges during their stay in the fleeting area.

“*Mooring cell*” means a sheet pile structure, usually filled with earth, stone or concrete, and used to hold barges or other vessels in place.

“*Operator*” means any person who operates a barge fleeting area.

“*Person*” means any individual, firm, partnership, joint venture, joint stock company, association, public or private corporation, municipality, cooperative, estate, trust, receiver, executor, administrator, fiduciary and any representative appointed by order of any court or otherwise acting on behalf of others.

“*Riparian rights*” means the legal rights that assure the owner of land abutting a stream or lake access to or use of the water.

571—17.5(461A) Barge fleeting leases. A person shall not assert any exclusive privilege to conduct barge fleeting and mooring service for hire, or not for hire, and shall not prevent or obstruct any lawful use of navigable waters under the jurisdiction of the commission except within a fleeting area leased by the executive council of Iowa or at a loading or offloading facility necessary to carry on commerce, provided the facility is constructed in compliance with Iowa department of transportation, U.S. Army Corps of Engineers, and all other applicable permits and regulations.

571—17.6(461A) Restricted areas. Leases shall not be issued for a fleeting area in the following locations unless the department determines there is a compelling reason for fleeting in such an area.

17.6(1) A site subject to unusual hazards including but not limited to high wind, strong current, violent ice movement, and hydraulic surges during the time fleeting operations are proposed to be carried out.

17.6(2) A site receiving high use for recreation, sport fishing, or commercial fishing unless the fleeting area can be placed or structured to be compatible with such uses.

17.6(3) A site immediately adjacent to industries or other facilities, which, together with fleeting operations, present a substantial risk of fire, explosion, water pollution, or other serious safety hazards.

17.6(4) A site where fleeting area activities would restrict or interfere with or have a substantial adverse effect on the use and enjoyment of an area owned by federal, state, or local government, including but not limited to public parks, game refuges, forests, or recreation areas used for access to docks, slips, harbors, marinas, boat launching ramps or unique biological or physical features of the river valley itself.

17.6(5) A site immediately adjacent to or over a dam, sill, lock, breakwater, revetment, navigation aid, or wing dam.

17.6(6) A site within established navigation channels for commercial or recreational vessels.

17.6(7) A site within the approach area for a lock portion of a dam structure.

17.6(8) A site adjacent to bridges or vessel approach areas to bridges.

571—17.7(461A) Prohibited areas. Leases shall not be issued for a fleeting area in the following locations:

17.7(1) A site that will have a substantial adverse affect on fish or wildlife (mussels, fish spawning, waterfowl, or furbearer) habitat due to dredging, propeller wash or other activity related to fleeting.

17.7(2) A site that would have an adverse impact on documented threatened and endangered species.

17.7(3) A site adjacent to national monuments or registered landmarks.

571—17.8(461A) Riparian rights. A fleeting area shall not be leased in any location that would interfere with the rights and privileges of the riparian property owner except with written permission of the riparian property owner or lack of response to the notice provided for in 17.10(2)“f.”

571—17.9(461A) Standards. The following standards shall apply to operation of fleeting areas:

17.9(1) A fleeting lease shall be construed to do no more than give the operator the right to designate and improve an area to be utilized for fleeting. The lease creates no interest, personal or real, in the real estate below the ordinary high water line except as provided in the lease.

17.9(2) Improvements in fleeting areas shall be limited to items such as construction of dolphins, mooring cells, deadmen, mooring barge anchors, and other similar methods of ensuring retention of barges if approved by the department. Improvements shall be constructed in a manner consistent with engineering standards of the U.S. Army Corps of Engineers.

17.9(3) Fleeting activities within leased fleeting areas shall be limited to barge mooring service, ancillary harbor towing and minor barge repair or servicing. No washing or cleaning of barges is permitted, unless conducted in compliance with the requirements of Iowa Code chapter 455B; the washing activities will not have a substantial adverse effect on fish or wildlife (mussels, fish spawning, waterfowl, or furbearer) habitat; and the department specifically approves the cleaning activity.

17.9(4) Barges shall not be moored to trees or other natural features of an area except with the approval of the riparian property owner or during an emergency.

17.9(5) Barge fleeting shall be conducted in a manner that minimizes bank erosion attributable to the fleeting operation.

17.9(6) Leased fleeting areas may be used for navigation and recreational pursuits such as boating and fishing only to the extent that such use does not interfere with fleeting activities. Other waterway users shall not obstruct barge fleeting activities within leased fleeting areas.

17.9(7) The right of entry of barges into a fleeting area may be refused by:

a. The operator.

b. The department, after conferring with the operator, when there is an imminent hazard to the public interest, or to public health, safety or welfare.

17.9(8) The operator shall, at all times, be responsible for the safety and security of the barges in the fleeting area and shall take reasonable precautions to eliminate hazards to boaters or other persons in the fleeting area.

17.9(9) Lights or other warning devices as required by state and federal navigation regulations shall mark moored or fledted barges.

17.9(10) The operator shall notify the department of the current name, address, and day and evening telephone numbers of the individual directly responsible for supervising the fleeting area who is to be notified in case of emergency.

17.9(11) A lease issued under this chapter may not be exercised until all other necessary permits or approvals have been issued by local, state or federal agencies having jurisdiction over the lease area.

17.9(12) All structures and devices shall be removed by the operator upon the expiration of a lease unless the department determines some structures and devices must remain in place to correct existing problems or to prevent future problems that could cause environmental damage.

571—17.10(461A) Application. An applicant for a lease, or a renewal of a lease, shall submit an application to the department on forms provided by the department.

17.10(1) Applicant. An applicant for a lease must be a person and an operator as defined in these rules.

17.10(2) Content of application. The following shall be included in the application:

a. A fee of \$500 for the cost of review of the lease application for a previously unleased site. Prior to issuance of a lease, the applicant shall pay the department an additional \$500 fee for administration of the lease.

b. A fee of \$1,000 for the cost of, and issuance and administration of a renewal lease.

c. Applicant name, address, telephone number, state of incorporation (if applicable) and whether the application is for a new lease or renewal.

d. A map extending at least one-half mile upstream and downstream from the proposed fleeting area showing the location of the proposed fleeting area by section, township, range, county and river mile and by major identifiable features in the immediate area such as locks and dams, incorporated areas, roads, bridges, and county lines. The map shall indicate designated fish and wildlife areas and refuges; existing recreational areas; historical, archeological and cultural sites, if known; residential housing locations; and existing adjacent water or shoreland uses which, together with fleeting operations, would present an unusual risk of fire, explosion, collision, contamination or other serious safety hazards. The map shall also show the following navigation-related features:

- (1) Docks.
- (2) Landings.
- (3) Harbors.
- (4) Marinas.
- (5) Dikes.
- (6) Revetments.
- (7) Islands.
- (8) Navigation or warning lights.
- (9) Wing dams.
- (10) Submerged cable and pipeline crossings.
- (11) Overhead power and utility lines.

e. Name, address, and telephone number of each riparian property owner adjacent to the fleeting area.

f. Proof that the applicant has riparian property rights on the navigable waterway adjacent to the entire area of the proposed fleeting area. Proof may include fee simple title, a lease of riparian or mooring rights from the riparian property owner, or written permission from the riparian property owner. In lieu of written permission, the applicant shall certify that the applicant has notified the riparian property owners of the proposed establishment of a fleeting area. Notification to riparian property owners shall be on forms furnished by the department and sent by certified mail. The riparian property owner shall respond to the department in writing within 30 days of receipt of notice if the riparian property owner objects to the issuance of a lease. The riparian property owner shall state the basis for objection in the response. The department shall consider the effects of lease issuance on the riparian property owner's rights. The department shall be notified by the operator of any action to terminate a lease or written permission.

g. A drawing of the proposed fleeting area which contains the following: plan view and cross sections to show existing pertinent topographic and hydrographic features; referenced government datum plane; scale, both vertical and horizontal (not smaller than 1" = 400' horizontal); north arrow; river current directions; property lines and adjacent property owners by name; proposed features including dolphins, anchors, deadmen, mooring barges, mooring cells and buoys, and other devices; mooring facility size and configuration; the maximum number and size of barges to be moored; and routes used by any tow entering or leaving the fleeting area.

h. Documentation of the need for the size, capacity, and location of the fleeting area for which a lease is requested.

i. A list of alternate sites considered and a statement of the reasons the requested site is preferred.

j. Signature of applicant or authorized agent.

571—17.11(461A) Application review and approval.

17.11(1) *Review of application.* Upon receipt of an application that complies with the requirements of 17.10(461A), the department will review the application to determine whether the application complies with applicable criteria in these rules. In order to determine such compliance, the applicant may be required, at the applicant's expense, to provide the department with anchor design criteria, underwater surveys and dives necessary to determine compliance.

17.11(2) *Notice of application.* Upon determination that an application complies with applicable criteria in these rules, the department staff shall give notice of receipt of the application as follows:

a. Publication of notice. The department shall publish one notice in a newspaper as defined in Iowa Code section 618.3 published in the county where the proposed fleeting area is located or in an adjacent county. The newspaper shall be of general circulation in the vicinity of the proposed fleeting area site. The notice shall briefly describe the location and nature of the proposed fleeting area, identify the department rules which are pertinent to the application, state whether the application is a new lease or renewal, and provide that a hearing will be scheduled if the director determines that there is a material issue concerning whether the application complies with applicable criteria in these rules. The notice shall allow interested persons 30 days from the date of publication to submit comments or a request for hearing, and shall state that a request for hearing must be supported by documentation of potential adverse effects of the proposed fleeting facility on an affected or aggrieved person.

b. Notification of governmental bodies and interested persons. The notice as prepared for publication shall also be sent by first-class ordinary mail or an equivalent method of service to the directors of the Iowa department of transportation, Iowa department of economic development, the Iowa secretary of agriculture, the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, U.S. Coast Guard, natural resources and transportation management agencies of the adjacent state, and to any person who has requested in writing that the person's name be placed on a mailing list for notification of barge fleeting facility applications adjacent to a designated county or counties. The mailing list will be updated at the beginning of every other calendar year.

17.11(3) *Lease approval.* If the director determines that there is not a material issue concerning whether the application complies with applicable criteria in these rules, the lease will be presented to the commission to obtain the commission's recommendation for approval to the executive council of Iowa. Final approval of the lease shall be by the executive council.

571—17.12(461A) Lease fee. The annual lease fee in dollars to be paid by the operator to the department shall be based on the dimensions of the area to be used as a fleeting area. The fee shall be determined as follows:

1. For each year included under leases issued prior to January 1, 2007, \$3.18 per each 100 square feet or fraction thereof.

2. Effective under leases issued on and after January 1, 2007, each subsequent January 1, the fee per 100 square feet shall be adjusted on a cumulative basis, by the percentage of the Consumer Price Index for the Midwest Urban Region, published by the U.S. Department of Labor, Bureau of Labor Statistics, for the previous one-year period.

571—17.13(461A) Renewals. The operator shall request renewal of the lease not more than nine or less than six months prior to its expiration. The application fee as provided in 17.10(2) "b" must accompany the request. A lease shall remain in force during the processing of an application for renewal, including any appeals process, provided that the application for renewal was made not less than six months before expiration of the lease. Failure to request renewal shall terminate the operator's rights to the fleeting area.

571—17.14(461A) Disputes concerning leases. Contested case procedures are not applicable to disputes concerning leases under this chapter, except as set forth in 17.15(461A) and 17.16(461A). A commission decision whether or not to recommend a lease or a particular condition of a lease is final agency action, subject to the right of an applicant or other affected person to file with the director a written request for reconsideration by the commission. The director must receive the request for reconsideration within 30 days after the commission's decision on a proposed lease. A commission decision to recommend a lease will be forwarded to the executive council of Iowa for approval after 30 days following the commission's decision unless the director has been notified of a written request for reconsideration or the filing of a petition for judicial review of the commission's recommendation.

571—17.15(461A) Lease revocation. A lease may be revoked upon determination that operation of the facility is in violation of a condition of the lease. Revocation proceedings shall be in compliance with Iowa Code chapter 17A and 571—Chapter 7.

571—17.16(461A) Nonuse. Failure by an operator to substantially exercise the rights granted in a lease issued under this chapter within a period of two years from the issuance of the lease shall render the lease null and void unless extended by the department. Failure by an operator to substantially exercise the rights granted in a lease issued under this chapter for any period of two consecutive years shall create a rebuttable presumption that the operator intends to abandon and forfeit the lease and shall be cause for a review of the lease by the department. The operator may request a contested case proceeding in accordance with Iowa Code chapter 17A and 571—Chapter 7.

These rules are intended to implement Iowa Code sections 461A.4, 461A.18, 461A.25, and 462A.32.

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